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Attorneys for Defendant

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

GERALD HESTER, on behalf of himself and  
all others similarly situated,

CASE NO.: **2:09-CV-00117-RLH-RJJ**

Plaintiff,

vs.

VISION AIRLINES, INC.,

Defendant.

**RESPONSE TO THE CLASS' SECOND MOTION FOR ATTORNEYS' FEES  
AND INCORPORATED MEMORANDUM OF LAW**

Defendant, Vision Airlines, Inc., by and through its counsel, James A. Kohl, Esq., of  
the law firm Howard & Howard Attorneys PLLC, files this Opposition to Motion for  
Attorneys Fees. This Opposition is based on the Points and Authorities attached hereto

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1 together with the Papers and Pleadings on file herein and any oral argument received by the  
2 Court.

3 Dated this 10<sup>th</sup> day of October, 2013.

4 **Howard & Howard Attorneys PLLC**

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6 /s/ James A. Kohl  
7 James A. Kohl, Esq.  
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13 **POINTS AND AUTHORITIES**

14 **I. ARGUMENT**

15 Although Plaintiffs' Motion is listed as a motion for attorney's fees, Plaintiffs also  
16 asked the court for it to award costs of suit. Vision takes no positions on the requests for  
17 attorney's fees. However, there is no explanation of the Class' requested costs, merely a one  
18 line request that they be awarded. Plaintiffs did not break out their costs or explain why  
19 they should be awarded. The request for costs should be denied.

20 "In the exercise of sound discretion, trial courts are accorded great latitude in  
21 ascertaining taxable costs." *Loughan v. Firestone Tire & Rubber Co.*, 749 F.2d 1519, 1526  
22 (11<sup>th</sup> Cir.1985) (citing *United States v. Kolesar*, 313 F.2d 835 (5th Cir.1963)). However, in  
23 exercising its discretion to tax costs, absent explicit statutory authorization, federal courts  
24 are limited to those costs specifically enumerated in 28 U.S.C. § 1920. *Crawford Fitting*  
25 *Co. v. J. T. Gibbons, Inc.*, 482 U.S. 437, 445, 107 S. Ct. 2494, 2499, 96 L. Ed. 2d 385  
26 (1987). The word "costs" is not synonymous with "expense." *Eagle Insurance Co. v.*  
27 *Johnson*, 982 F.Supp 1456, 1458 (M.D. Ala. 1997). "[E]xpense includes all the  
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expenditures actually made by a litigant in connection with the lawsuit.” *Id.* (citations omitted). “Whereas the costs that the district court may award under Rule 54(d)(1) are listed in 28 U.S.C.A. § 1920, and a district court may not award other costs or exceed the amounts provided in § 1920 without explicit authorization in another statutory provision.” *Id.* (citations omitted). Thus, the costs will almost always be less than the total expenses associated with the litigation. *Id.* (citations omitted).

#### § 1920. Taxation of costs

A judge or clerk of any court of the United States may tax as costs the following:

- (1) Fees of the clerk and marshal;
- (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

The Court may not tax costs that are not authorized by statute or court rule. *Arlington Cent. School Dist. Bd. Educ. V. Murphy*, 548 U.S. 291, 301, 126 S.Ct. 2455, 2461-62, 165 L. Ed. 2d 526 (2006). Thus, courts may not tax the following as costs: (a) the fees and expenses of expert witnesses; *Id.* (b) Lexis and Westlaw; *Jones v Unisys Corp.*, 54 F.3d 624, 633 (10<sup>th</sup> Cir. 1995) (c) trial consultants; *Summit Technology, Inc. v. Nidek Co., Ltd.*, 435 F.3d 1371, 1375 (Fed. Cir. 2006) (d) postage, couriers and/or delivery services; *Smith v.*

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1 *Tenent Healtsystem SL, Inc.* 436 F.3d 879, 889 (8<sup>th</sup> Cir. 2006) (e) telephone calls and  
 2 facsimiles; *O’Brhym v. Reliance Standard Life Ins. Co.*, 997 F. Supp 728, 737 (E.D. Va.  
 3 1998) *aff’d*, 188 F.3d 504 (4<sup>th</sup> Cir. 1999); (f) paralegal time; *Thomas v. Treasury*  
 4 *Management Ass’s, Inc.*, 158 F.R.D. 364, 372 (E. Md. 1994) (g) travel, lodging,  
 5 transportation, and parking; *Garshman Co., Ltd. v. Gen. Elec. Co., Inc.*, 993 F. Supp. 25, 29  
 6 (D. Mass. 1998) *aff’d* 176 F.3d 1 (1st Cir. 1999) and (h) mediator's fees *Brisco-Wade v.*  
 7 *Carnahan*, 297 F.3d 781, 782 (8th Cir. 2002). Defendant’s Motion For Attorney’s Fees also  
 8 asks for (a) the fees and expenses of expert witnesses; (b) Westlaw; (c) postage, couriers  
 9 and/or delivery services; (d) telephone calls and facsimiles; and (e) travel, lodging,  
 10 transportation, and parking expenses. All of the above are prohibited and should be  
 11 excluded. Additionally, plaintiffs seek the costs of copies. Photocopying expenses are  
 12 allowed “only to the extent that the copies were used as court exhibits or were furnished to  
 13 the court or opposing counsel.” *Board of Directors, Water's Edge v. Anden Group*, 135  
 14 F.R.D. 129, 138 (E.D.Va.1991). As with the other costs, Plaintiffs offered no description of  
 15 the purposes for which these photocopies were made. Additionally Plaintiffs have not  
 16 offered the charge per copy. Accordingly the copy charges should also be rejected.

#### 20 IV. CONCLUSION

21 Plaintiffs’ asked this Court to award them costs. Plaintiffs have not itemized the costs  
 22 so it is impossible for Vision or the Court to determine what they are asking for.

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1 Additionally, the summary of costs contains numerous items that this Court is not permitted  
2 to award. Accordingly, the Court should deny Plaintiffs' requests for costs.

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4 Dated this 13<sup>th</sup> day of October, 2013.

5 **Howard & Howard Attorneys PLLC**

6 /s/ James A. Kohl

7 James A. Kohl, Esq.

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**CERTIFICATE OF ELECTRONIC FILING**  
**AND CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that on October 10, 2013, I electronically filed a true and correct copy of the foregoing document with the Clerk of this Court using the CM/ECF system, which sent notification of such filing to the following:

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